

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR-CBOE-95-57 and should be submitted by November 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36354; File No. CBOE-95-28]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Responsibility for Performing Functions of the ITS Clerks

October 10, 1995.

On May 19, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend one of its Intermarket Trading System ("ITS" or "System") rules, CBOE Rule 30.75, which relates to the exchange trading of stocks, warrants and other non-option securities. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on July 6, 1995.³ Notice of the proposed rule change and Amendment No. 1 was published for comment and appeared in the Federal Register on August 17, 1995.⁴ No comment letters were received on the proposal. This order approves the CBOE proposal as amended.

Description of the Proposal

CBOE Rule 30.75 ("Transmission and Reception of System Messages; Exchange Liability"), governs the transmission and reception of obligations and commitments to trade, pre-opening notifications, and responses

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange corrects a typographical error in the defined term "ITS Clerk" as it appears in Rule 30.75 and in the two proposed interpretations and policies thereunder, and clarifies the use of that term in proposed Interpretation and Policy .02 under Exchange Rule 30.75. The purpose of this amendment is to make it clear that the defined term "ITS Clerk" refers only to Exchange employees acting as such, and not to employees of a Designated Primary Market-Maker who may be performing the functions of ITS Clerks as contemplated by proposed Interpretation and Policy .01 under Exchange Rule 30.75. See Letter from Michael L. Meyer, Esq., Schiff Hardin & Waite, to James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated July 6, 1995 ("Amendment No. 1"). August 17, 1995. No comment letters were received on the proposal. This order approves the CBOE proposal as amended.

⁴ See Securities Exchange Act Release No. 36085 (August 10, 1995), 60 FR 42927 (August 17, 1995).

thereto over the ITS.⁵ Currently, Exchange Rule 30.75 requires the Exchange to provide ITS Clerks to send and receive ITS messages. The Exchange proposes to amend Paragraph (a) of the Rule to clarify that the Exchange will not be obligated to provide ITS Clerks, except as provided in the interpretations to the Rule.

Proposed interpretation .01 to Exchange Rule 30.75 would require employees of Designated Primary Market-Makers ("DPMs")⁶ to send and receive commitments and obligations to trade, pre-opening notifications, and responses thereto over the System. Further, the interpretation makes it clear that the Exchange will not be liable for the acts, errors, or omissions of these DPM employees.⁷

A second interpretation to the Rule makes it clear that the Exchange will provide Exchange-employed ITS Clerks for products that are traded at posts that have order book officials ("OBOs"), and will not provide ITS Clerks for products for which a DPM has been appointed. The Exchange also would be required to provide the services of ITS Clerks for products for which DPMs make markets when the circumstances (such as fast markets) warrant. Two Floor Officials would be able to require the Exchange to provide its ITS Clerks for particular circumstances.

The Exchange believes this rule change is warranted because it is possible that some of its Chapter 30 products, which the Exchange may trade in the future, may be assigned to DPMs. As such, the Exchange believes it would be most efficient for the DPM that is assigned to the product that is

⁵ ITS is a subsystem of the National Market System approved by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k-1. ITS facilities intermarket trading in exchange-listed equity securities based on the current quotation information emanating from the linked markets. Participants of ITS include the American Stock Exchange, the Boston Stock Exchange, CBOE, the Chicago Stock Exchange, the Cincinnati Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the National Association of Securities Dealers.

⁶ A DPM is a member or member organization which has been appointed by the Exchange's Modified Trading System ("MTS") Committee to perform market-making and certain other functions with respect to a designated options class or classes or with respect to a product traded on the Exchange pursuant to Chapter 30. Among other things, a DPM is required to disseminate accurate market quotations, honor market quotations, be regularly present at the trading post, and perform the functions of an Order Book Official, i.e., he must maintain and keep current the customer limit order book.

⁷ Rule 30.75 currently does provide for limited liability of the Exchange for losses caused by the errors or omissions of the Exchange's own employees, i.e., ITS Clerks.

⁴ 17 CFR 200.30-3(a)(12).

subject to the ITS rules to employ its own employees to perform the functions of the ITS Clerks. Because a DPM runs his own business, he is in the best position to make the business determination concerning how many employees are needed to perform the various functions assigned to him, including the ITS functions. Requiring the DPM to provide employees to perform these functions, therefore, should limit the resources the Exchange will be required to provide to perform this function and thus, reduce overall costs to the Exchange and its members. Customers of the Exchange and the DPMs would be protected from interruption of service in the system, however, because the Exchange will have employees available to perform the ITS function when the circumstances warrant.

Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)⁸ in that it is designated to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in clearing and facilitating transactions in securities, and to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change will result in a more efficient allocation of Exchange resources by requiring the DPMs assigned to particular products to provide their own employees to perform the ITS functions. The proposed change will shift the responsibility for providing ITS employees from the Exchange to the primary users of the ITS system, thus creating a more economically efficient operation for the Exchange. This will become particularly important if trading volume in Chapter 30 products on the Exchange increases.

Additionally, the Commission notes that the proposed change is consistent with the goals of the ITS plan. One of the goals of the ITS plan, and Section 11A of the Act, is to link effectively all markets for qualified securities through data processing and communication facilities, and to assure fair competition among Exchanges.⁹ The proposed rule change merely shifts the responsibility for performing the functions of ITS Clerks from the Exchange to DPMs

assigned to a particular product, and will have no negative impact on CBOE's ability to remain linked to the other participants of ITS. Moreover, the change will not provide CBOE with any unfair competitive advantage over the other participants in the ITS plan.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-95-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36359; International Series Release No. 865; File No. SR-NASD-95-46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Extension of the Nasdaq International Service Pilot Program

October 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 4, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The NASD proposes to extend for two years: (i) The pilot term of the Nasdaq International Service ("Service"); and (ii) the effectiveness of certain rules ("International Rules") that are unique to the Service. This rule change does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 11, 1995; therefore, with this filing, the pilot period for the Service and the

International Rules would be extended until October 11, 1997.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD proposes to extend for two years, until October 11, 1997, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation of the Service and the International Rules was authorized by the SEC in October 1991¹ and the Service was launched on January 20, 1992. In October 1993, the SEC approved a two-year extension of the pilot program for the Service through October 11, 1995.²

The Service supports an early trading session running from 3:30 a.m. to 9:00 a.m. Eastern Time on each U.S. business day ("European Session") that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m. or 7:30 a.m., Eastern Time. The election is required to be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker.³ At present, there

¹ See Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (SR-NASD-90-33).

² See Securities Exchange Act Release No. 33037 (October 8, 1993), 58 FR 53752 (SR-NASD-93-50).

³ Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all the obligations of a Service market maker from that time (i.e., either 3:30 a.m., 5:30 a.m. or 7:30 a.m.) until the European Session

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Securities Exchange Act Release No. 28874 (February 12, 1991), 56 FR 6889 (February 20, 1991) (order approving ninth amendment to ITS to include CBOE as a participant in the ITS plan).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).